

REMARKS

This is a full and timely response to the outstanding final Office Action mailed September 10, 2007 (Paper No./Mail Date 20070903). Upon entry of the amendments in this response, claims 2-16 and 18-40 remain pending. In particular, Applicants add claims 28-40 and amend claims 2, 3, 13, 18, 19, 21, and 27. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. Claim Objections

Claims 18, 19, 21, and 27 have been objected to because of the following informalities:

- (a) In line 1 of both claims 18 and 19, "claim 17" should be "claim 14" since claim 17 has been cancelled;
- (b) In claim 21, line 3, "the DSL modem" should be "the DSL transmitting modem";
and
- (c) In claim 27, line 1, "claim 25" should be "claim 26" because claim 27 is a method claim but claim 25 is an apparatus claim.

In response to the objections, Applicants have amended claims 18, 19, 21, and 27. In view of these claim amendments, Applicants respectfully submit that the claims are not objectionable and respectfully request that the objection be withdrawn.

II. Claim Rejections Under 35 U.S.C. §102

A. Statement of Rejection

Claims 2-11, 13-16, 18-20, and 22 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Goldstein* ("*Goldstein*," U.S. Pat No. 5,265,151). Applicants respectfully traverse this rejection as applied to pending claims 2-11, 13-16, 18-20, and 22.

B. Discussion of Rejections

A proper rejection of a claim under 35 U.S.C. §102 requires that a single cited art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

In the present case, not every feature of the claimed invention is represented in the *Goldstein* reference. Applicants discuss the *Goldstein* disclosure and Applicants' claims in the following.

1. Initial Matters

As an initial matter, the Office Action alleges that "All claimed subject matter of claims 3-13 and 15-21 are described in the abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7, line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58" (Office Action, page 4). Applicants object to this vague rejection of Applicant's claim limitations. In particular, the MPEP points out in § 707.07(d) under "Improperly Expressed Rejections" that:

An omnibus rejection of the claim "on the references and for the reasons of record" is stereotyped and usually not informative and should therefore be avoided. This is especially true where certain claims have been rejected on one ground and other claims on another ground.

A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

The Office Action has rejected claims 3-13 and 15-21 on the same grounds, which are not equally applicable to all claims because each claim contains different features. In addition, claims 12 and 21 have been indicated as containing allowable subject matter (Office Action, page 5) in contradiction to the above rejection.

Therefore, if the Office Action alleges that *Goldstein* teaches each of the claim features, the Office Action should specifically identify where in the *Goldstein* reference *each* of those individual features are disclosed. A broad-brush statement that Applicant's multiple features are "described" somewhere in the reference's "abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7,

line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58" denies the Applicant a full opportunity to address and refute rejection of Applicant's claims. In other words, without a specific identification of how *Goldstein* anticipates each of those separate features, it is not possible to fully respond to the rejection given that the true basis for the rejection is not ascertainable.

2. Claims 2-11 and 13

a. Independent Claim 2

Applicants' amended independent claim 2 provides as follows (emphasis added):

A method of adjusting transmit performance parameters over a digital subscriber line (DSL), the method performed in a first DSL modem, the method comprising the steps of:
negotiating, with a second DSL modem, a value for a first performance parameter;
 receiving, from the second DSL modem, a signal exhibiting the first performance parameter;
 determining a signal-to-noise-ratio for the received signal; and
requesting, from the second DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter.

Applicants respectfully request that the rejection of independent claim 2 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 2.

i. Does not teach "negotiating ... a value"

The Office Action alleges that "Goldstein discloses modem 1 and modem 2 in Figure 1 wherein each modem comprises a transmitter section 34a or 34b and a receiver section 38a or 38b for negotiating, for example, a desired power level or a corrective signal between the transmitter section 34a or 34b and the receiver section 38a or 38b" (Office Action, page 2, emphasis added). However, *Goldstein* teaches that "in accord with the present invention, attenuation is controlled to be a function of the noise and IMD [intermodulation distortion]" (col.

4, lines 34-36). "As used herein, the term 'attenuation' is intended to include both an increase in energy and a decrease in energy" (col. 4, lines 66-68).

A first preferred scheme is ... utilize a look-up table for that modem to identify the desired power level based on the measured signal/noise ratio and the measured IMD. A second preferred scheme is to decrease the signal power according to a formula. ... A third scheme for reducing the power level is to *send signals of different power levels, and make measurements relating to the error rate*. In al [sic] three schemes, *the desired power level, or a corrective signal would be sent back to the transmitting modem*. A fourth scheme is to measure the quality of points in a constellation, to send a corrective signal back to adjust the power, and to iterate until a threshold is met or an optimum is found.

Regardless of the details of where or via what circuitry attenuation is accomplished, *in accord with the invention, the amount of attenuation should be controlled in response to a function of the noise and IMD of the communication channel*. ... *Based on the measured signal/noise ratio and IMD, ... the receiving modem 20b communicates to the sending modem 20a control information. Based on the control information, the sending modem 20a adjusts or controls the power of the transmitted signal*.

... information such as a desired power level (send at -3 dBm), or a corrective signal (e.g., decrease by 4 dB from maximum) must be sent by the receiving modem back to the transmitting modem.

(Goldstein, col. 2, lines 34-54; col. 5, lines 29-51; and col. 9, lines 12-16; emphasis added).

Thus, Goldstein discloses sending a signal at a power level, measuring noise and IMD, and communicating information to adjust power level. Even assuming, for the sake of argument, sending a signal, measuring noise and IMD, and communicating information does correspond to "negotiating ... a desired power level or a corrective signal," it is not "negotiating ... a value."

Thus, Goldstein does not disclose, teach, or suggest "*negotiating, with a second DSL modem, a value for a first performance parameter*" as recited in claim 2.

ii. **Does not teach "requesting ... an adjustment in a second performance parameter"**

Even assuming, *arguendo*, that determining a desired power level or a corrective signal is equivalent to "negotiating ... a value for a first performance parameter," Goldstein does not teach or suggest "requesting, from the second DSL modem, an adjustment in a second

performance parameter associated with the received signal, *wherein the second performance parameter is different from the first performance parameter*" as recited in claim 2. In fact, the Office Action fails to allege that Goldstein discloses "the second performance parameter is different from the first performance parameter." As indicated in MPEP § 2131, "to anticipate a claim, the reference must teach every element of the claim." Specifically, the Office Action alleges that the first and second parameters are the same.

Goldstein discloses a modem 1 and a modem 2 in Fig. 1, each modem comprises a transmitting modem 34a or 34b for transmitting **a transmission power (first parameter)** to a receiving modem 38a or 38b for receiving the transmission power, determining a signal/noise ration [sic] for the received transmission power, and requesting adjustment of **the transmission power (second parameter)** from the microprocessor 30a or 30b stored from the memory 32a or 32b if the transmission power is below or above a predetermined transmission power level in order to increase or decrease the transmission power.

(Office Action, page 4, emphasis added). Nor does Goldstein disclose or suggest adjusting other parameters. Thus, Goldstein does not disclose, teach, or suggest a **"requesting ... an adjustment in a second performance parameter** associated with the received signal, **wherein the second performance parameter is different from the first performance parameter"** as recited in claim 2.

iii. Summary

Even assuming, *arguendo*, that the first parameter is not transmission power, Goldstein does not teach or suggest **"negotiating ... a value for a first performance parameter."** As indicated above, Goldstein discloses making measurements relating to the error rate, "the error rate being a function of both the signal/noise ratio and the IMD" (col. 2, lines 25-26). Goldstein does not teach negotiating a value for either signal/noise ratio or IMD. Furthermore, Goldstein does not disclose negotiating other parameters.

Thus, for at least the reasons discussed above, Goldstein does not disclose, teach, or suggest either **"negotiating, with a second DSL modem, a value for a first performance**

parameter” or “requesting, from the second DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter” as recited in claim 2. Therefore, Applicants respectfully submit that Goldstein does not anticipate independent claim 2 and respectfully request that the rejection of claim 2 be withdrawn.

b. Claims 3-11 and 13

Since independent claim 2 is allowable, Applicants respectfully submit that claims 3-11 and 13 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 3-11 and 13 be withdrawn.

c. Claims 5 and 7

Applicants' dependent claim 5 provides as follows (emphasis added):

The method of claim 2, wherein the ***second performance parameter is transmit data rate***.

Applicants' dependent claim 7 provides as follows (emphasis added):

The method of claim 6, wherein said ***second performance parameter is transmit data rate*** and said first performance parameter is transmit power level.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claims 5 and 7 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claims 5 and 7.

i. Does not disclose “transmit data rate”

The Office Action alleges that “the signal/noise ration [sic] is the transmission data rate” (Office Action, page 4). Applicants respectfully disagree. One skilled in the art would understand that signal/noise ratio is not the same as transmission data rate. It is possible to

have different signal/noise ratios at the same transmission rate. Likewise, it is possible to have the same signal/noise ratio for different transmission rates.

Furthermore, *Goldstein* does not teach transmission data rate. Nor does it disclose or suggest equating a signal/noise ratio to a transmission data rate. Rather, as discussed previously, *Goldstein* teaches “methods and apparatus for improving modem performance by controlling the transmitted power of the modem” (col. 2, lines 12-14). Thus, *Goldstein* does not disclose, teach, or suggest “**transmit data rate**” as recited in claims 5 and 7.

ii. Does not disclose “second performance parameter is transmit data rate”

The Office Action appears to allege that the second performance parameter is transmit data rate “since a data rate is based on signal power/noise power as defined in equation 2, on page 6, paragraph [0029] or the instant application” (Office Action, page 2). However, “for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly” (MPEP § 706.02, emphasis added). Since the present application is not a reference, use of the Applicants’ “Detailed Description” does not overcome this requirement.

Since the feature is not disclosed, Applicants assume, for the sake of argument, that the Office Action is alleging this feature is inherent in *Goldstein*.

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) ... “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) ...

(MPEP § 2112). Even assuming, *arguendo*, that the present application can be used as extrinsic evidence, it appears that the Office Action misinterprets EQ. 2. In paragraph [0028] of the application, “the maximum rate at which data can be transmitted across xDSL 16 is directly related to the logarithm of the ratio of the signal power to the noise power on the channel as expressed in EQ. 2” (emphasis added). This does not equate signal/noise ratio to transmission data rate as alleged in the Office Action. Thus, the Office Action fails to show that the “characteristic necessarily flows from the teachings of the applied prior art.”

In addition, under the Examiner’s analysis, each limitation of Applicant’s claims is being considered independent of the other limitations. Such an approach is improper given that it treats Applicant’s claims in a piecemeal fashion such that each limitation is evaluated in a vacuum. As is well established in the law, the Examiner must instead consider the claims as a whole. *Hartness International, Inc. v. Simplicatic Engineering Co.*, 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987)(In determining obviousness, “the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed”). When Applicant’s claims are considered as a whole, it becomes clear that *Goldstein* does not teach what the Examiner alleges.

The Office Action alleges that “data rates or error rates are used and stored in the memory 32a or 32b and the microprocessor 30a or 30b conducts mathematical and logical operations in order for the receiving modem to adjust the transmitting power of the transmitting modem” (Office Action, page 2). However, no supporting reference is provided. First, error rates are not data rates and Applicants do not claim error rates. Second, *Goldstein* does not teach or suggest data rates at all, much less storing data rates in memory or using data rates to adjust transmitting power, as alleged in the Office Action. Nor does *Goldstein* disclose or suggest adjusting transmission data rate. Thus, *Goldstein* does not disclose, teach, or suggest a “**second performance parameter is transmit data rate**” as recited in claims 5 and 7.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest a **"second performance parameter is transmit data rate"** as recited in claims 5 and 7. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claims 5 and 7 and respectfully request that the rejection of claims 5 and 7 be withdrawn.

d. Claim 8

Applicants' dependent claim 8 provides as follows (emphasis added):

The method of claim 6, wherein said second performance parameter is transmit power level and said **first performance parameter is transmit data rate**.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claim 8 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 8.

i. Does not disclose "transmit data rate"

For at least the same reasons as those discussed above in section II.B.2.c.i, with regard to claims 5 and 7, *Goldstein* does not disclose, teach, or suggest **"transmit data rate"** as recited in claim 8.

ii. Does not disclose "first performance parameter is transmit data rate"

The Office Action alleges that "data rates or error rates are used and stored in the memory 32a or 32b and the microprocessor 30a or 30b conducts mathematical and logical operations in order for the receiving modem to adjust the transmitting power of the transmitting modem" (Office Action, page 2). However, no supporting reference is provided. First, error rates are not data rates and Applicants do not claim error rates. Second, *Goldstein* does not

teach or suggest data rates at all, much less storing data rates in memory or using data rates to adjust transmitting power, as alleged in the Office Action.

In addition, under the Examiner's analysis, each limitation of Applicant's claims is being considered independent of the other limitations. Such an approach is improper given that it treats Applicant's claims in a piecemeal fashion such that each limitation is evaluated in a vacuum. As is well established in the law, the Examiner must instead consider the claims as a whole. *Hartness International, Inc. v. Simplicatic Engineering Co.*, 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987)(In determining obviousness, "the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed"). When Applicant's claims are considered as a whole, it becomes clear that *Goldstein* does not teach what the Examiner alleges.

The Office Action alleges that "All claimed subject matter of claims 3-13 and 15-21 are described" in the cited reference (Office Action, page 4). However, *Goldstein* does not teach or suggest negotiating a value for transmit data rate. Even assuming, *arguendo*, that signal/noise ratio is equivalent to transmission data rate (as alleged in the Office Action), *Goldstein* does not disclose negotiating a value for signal/noise ratio. Thus, *Goldstein* does not disclose, teach, or suggest a "**first performance parameter is transmit data rate**" as recited in claim 8.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest "**first performance parameter is transmit data rate**" as recited in claim 8. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claim 8 and respectfully request that the rejection of claim 8 be withdrawn.

e. **Claim 9**

Applicants' dependent claim 9 provides as follows (emphasis added):

The method of claim 2, further comprising the step of:
selecting the second performance parameter from a plurality of possible performance parameters.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claim 9 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 9.

The Office Action alleges that "All claimed subject matter of claims 3-13 and 15-21 are described" in the cited reference (Office Action, page 4). However, *Goldstein* does not disclose, teach, or suggest "***selecting the second performance parameter from a plurality of possible performance parameters***" as recited in claim 9. *Goldstein* teaches "Based on the control information, the sending modem 20a adjusts or controls the power of the transmitted signal" (col. 5, lines 49-51). *Goldstein* does not disclose or suggest selecting a parameter from a plurality of possible parameters. Furthermore, when the claims are considered as a whole, *Goldstein* does not disclose or suggest adjusting other parameters.

Thus, *Goldstein* does not teach or suggest "***selecting the second performance parameter from a plurality of possible performance parameters***" as recited in claim 9. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claim 9 and respectfully request that the rejection of claim 9 be withdrawn.

3. Claims 14-16 and 18-20

a. Independent Claim 14

Applicants' independent claim 14 provides as follows (emphasis added):

A receiving digital subscriber line (DSL) modem comprising:
 means for receiving, from a transmitting DSL modem, a signal exhibiting a first performance parameter;
means for negotiating, with the transmitting DSL modem, a value for the first performance parameter;
 means for determining a signal-to-noise-ratio for the received signal; and
means for requesting, from the transmitting DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter.

Applicants respectfully request that the rejection of independent claim 14 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 14.

i. Does not teach “means for negotiating ... a value”

The Office Action alleges that “Goldstein discloses modem 1 and modem 2 in Figure 1 wherein each modem comprises a transmitter section 34a or 34b and a receiver section 38a or 38b for negotiating, for example, a desired power level or a corrective signal between the transmitter section 34a or 34b and the receiver section 38a or 38b” (Office Action, page 2, emphasis added). For at least the same reasons as those discussed above in sections II.B.2.a.i and II.B.2.a.iii, with regard to claim 2, *Goldstein* does not disclose, teach, or suggest “*negotiating ... a value for the first performance parameter*” as recited in claim 14.

In addition, *Goldstein* teaches:

The apparatus of the invention relates closely to the method invention, and as aforementioned essentially comprises a microprocessor and memory already resident in conjunction with the receiving section of a modem, and an attenuator typically resident in the transmitting section of a modem, where the attenuator is responsive to information received from the receiving modem (typically via microprocessor commands) for appropriately adjusting the transmitting power of the transmitting modem. The microprocessor must be properly programmed in well known manners to measure IMD and

signal/noise ratio (if not already programmed to do the same). Depending upon the scheme utilized for determining final power, the microprocessor will either conduct mathematical and logic operations, address a look-up chart stored in memory, will compare different error rate information, or will conduct other operations as required.

(*Goldstein*, col. 10, lines 25-42). As such, *Golstein* does not teach or suggest “**means for negotiating, with the transmitting DSL modem, a value for the first performance parameter**” as recited in claim 14. Even assuming, *arguendo*, that a receiving section, a “microprocessor programmed ... to measure IMD and signal/noise ratio ... [and] either conduct mathematical and logic operations, address a look-up chart stored in memory, [or] ... compare different error rate information,” and a transmitter section correspond to means for “negotiating ... a desired power level or a corrective signal,” it is not “means for negotiating ... a value.” Furthermore, *Goldstein* does not teach or suggest means for negotiating a value for signal/noise ratio, IMD, or other parameters. Thus, *Goldstein* does not disclose, teach, or suggest “**means for negotiating ... a value for the first performance parameter**” as recited in claim 14.

ii. Does not teach “means for requesting ... an adjustment in a second performance parameter”

For at least the same reasons as those discussed above in section II.B.2.a.ii, with regard to claim 2, *Goldstein* does not disclose, teach, or suggest a “**requesting ... an adjustment in a second performance parameter**” associated with the received signal, **wherein the second performance parameter is different from the first performance parameter**” as recited in claim 14.

Moreover, *Goldstein* only teaches “the attenuator is responsive to information received from the receiving modem for appropriately adjusting the transmitting power of the transmitting modem.” *Goldstein* does not teach means for requesting an adjustment of other parameters. Thus, *Goldstein* does not disclose, teach, or suggest a “**means for requesting ... an adjustment in a second performance parameter**” associated with the received signal,

wherein the second performance parameter is different from the first performance parameter” as recited in claim 14.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest either “*means for negotiating, with the transmitting DSL modem, a value for the first performance parameter*” or “*means for requesting, from the transmitting DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter*” as recited in claim 14. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate independent claim 14 and respectfully request that the rejection of claim 14 be withdrawn.

b. Claims 15-16 and 18-20

Since independent claim 14 is allowable, Applicants respectfully submit that claims 15-16 and 18-20 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 15-16 and 18-20 be withdrawn.

c. Claims 16 and 18

Applicants’ dependent claim 16 provides as follows (emphasis added):

The receiving DSL modem of claim 14, wherein the ***second performance parameter is transmit data rate***.

Applicants’ amended dependent claim 18 provides as follows (emphasis added):

The receiving DSL modem of claim 14, wherein said ***second performance parameter is transmit data rate*** and said first performance parameter is transmit power level.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claims 16 and 18 be withdrawn for at least the reason that

Goldstein fails to disclose, teach, or suggest at least the features recited and emphasized above in claims 16 and 18.

i. Does not disclose “transmit data rate”

For at least the same reasons as those discussed above in section II.B.2.c.i, with regard to claims 5 and 7, *Goldstein* does not disclose, teach, or suggest “**transmit data rate**” as recited in claims 16 and 18.

ii. Does not disclose “second performance parameter is transmit data rate”

For at least the same reasons as those discussed above in section II.B.2.c.ii, with regard to claims 5 and 7, *Goldstein* does not disclose, teach, or suggest a “**second performance parameter is transmit data rate**” as recited in claims 16 and 18.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest a “**second performance parameter is transmit data rate**” as recited in claims 16 and 18. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claims 16 and 18 and respectfully request that the rejection of claims 16 and 18 be withdrawn.

d. Claim 19

Applicants’ amended dependent claim 19 provides as follows (emphasis added):

The receiving DSL modem of claim 14, wherein said second performance parameter is transmit power level and said **first performance parameter is transmit data rate**.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claim 19 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 19.

i. Does not disclose “transmit data rate”

For at least the same reasons as those discussed above in section II.B.2.c.i, with regard to claims 5 and 7, *Goldstein* does not disclose, teach, or suggest “***transmit data rate***” as recited in claim 19.

ii. Does not disclose “first performance parameter is transmit data rate”

For at least the same reasons as those discussed above in section II.B.2.d.ii, with regard to claim 8, *Goldstein* does not disclose, teach, or suggest a “***first performance parameter is transmit data rate***” as recited in claim 19.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest “***first performance parameter is transmit data rate***” as recited in claim 19. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claim 19 and respectfully request that the rejection of claim 19 be withdrawn.

e. Claim 20

Applicants' dependent claim 20 provides as follows (emphasis added):

The receiving DSL modem of claim 14, further comprising:
means for selecting the second performance parameter from a plurality of possible performance parameters.

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that rejection of dependent claim 20 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 20.

For at least the same reasons as those discussed above in section II.B.2.e, with regard to claim 9, *Goldstein* does not disclose, teach, or suggest a “***selecting the second performance parameter from a plurality of possible performance parameters***” as recited in

claim 20. Nor does Goldstein teach or suggest “*means for selecting the second performance parameter.*” Thus, *Goldstein* does not disclose, teach, or suggest a “*means for selecting the second performance parameter from a plurality of possible performance parameters*” as recited in claim 20. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate dependent claim 20 and respectfully request that the rejection of claim 20 be withdrawn.

4. Claim 22

Applicants’ independent claim 22 provides as follows (emphasis added):

A system for adjusting transmit performance parameters over a digital subscriber line (DSL) comprising:
means for negotiating, with a DSL modem, a criteria for a first performance parameter;
 means for receiving, from the DSL modem, a signal exhibiting the first performance parameter;
 means for determining a signal-to-noise-ratio for the received signal; and
means for requesting, from the DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter.

Applicants respectfully request that the rejection of independent claim 22 be withdrawn for at least the reason that *Goldstein* fails to disclose, teach, or suggest at least the features recited and emphasized above in claim 22.

i. Does not teach “means for negotiating ... a criteria”

The Office Action alleges that “Goldstein discloses modem 1 and modem 2 in Figure 1 wherein each modem comprises a transmitter section 34a or 34b and a receiver section 38a or 38b for negotiating, for example, a desired power level or a corrective signal between the transmitter section 34a or 34b and the receiver section 38a or 38b” (Office Action, page 2, emphasis added). For at least the same reasons as those discussed for “*negotiating ... a value*” in sections II.B.2.a.i and II.B.2.a.iii, with regard to claim 2, *Goldstein* does not disclose, teach, or suggest “*negotiating ... a criteria for the first performance parameter*” as recited

in claim 22. In addition, for at least the same reasons as those discussed for ***"means for negotiating ... a value"*** in section II.B.3.a.i, with regard to claim 14, *Goldstein* does not teach or suggest ***"means for negotiating, with a DSL modem, a criteria for a first performance parameter"*** as recited in claim 22.

ii. Does not teach "means for requesting ... an adjustment in a second performance parameter"

For at least the same reasons as those discussed above in section II.B.2.a.ii, with regard to claim 2, *Goldstein* does not disclose, teach, or suggest a ***"requesting ... an adjustment in a second performance parameter"*** associated with the received signal, ***wherein the second performance parameter is different from the first performance parameter"*** as recited in claim 22. In addition, for at least the same reasons as those discussed above in section II.B.3.a.ii, with regard to claim 14, *Goldstein* does not disclose, teach, or suggest a ***"means for requesting ... an adjustment in a second performance parameter"*** associated with the received signal, ***wherein the second performance parameter is different from the first performance parameter"*** as recited in claim 22.

iii. Summary

Thus, for at least the reasons discussed above, *Goldstein* does not disclose, teach, or suggest either ***"means for negotiating, with a DSL modem, a criteria for a first performance parameter"*** or ***"means for requesting, from the DSL modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter"*** as recited in claim 22. Therefore, Applicants respectfully submit that *Goldstein* does not anticipate independent claim 22 and respectfully request that the rejection of claim 22 be withdrawn.

III. Allowable Subject Matter

Applicants acknowledge the Examiner's conclusions that the claims 12, 21, and 23-27 would be allowable if rewritten in independent form, as noted in items 7 and 8 on page 5 of the Office Action. Claim 12 has been rewritten in independent form as newly added claim 31. However, Applicants have not amended dependent 12, 21, and 23-27 to incorporate the limitations of their base claims in this response because Applicants believe, for the reasons detailed above, that base claims 2, 14, and 22 are allowable. Thus, Applicants respectfully submit that claims 12, 21, and 23-27 are in condition for allowance.

IV. New Claims

Claims 28-40 have been added into the application through this Response. Applicants submit that new claims 28-40 are allowable over the cited references. Specifically, independent claim 31 corresponds to claim 12 rewritten in independent form, which the Examiner indicated would be allowable (Office Action, page 5). Independent claim 37 is allowable for at least the reason that the cited references do not teach, disclose, or suggest either a control program configured to "negotiate, with a transmitting DSL modem, a value for a first performance parameter" or a control program configured to "request, from the transmitting modem, an adjustment in a second performance parameter associated with the received signal, wherein the second performance parameter is different from the first performance parameter." Claims 28-30, 32-36, and 38-40 are allowable over the cited references for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Applicants, therefore, respectfully request that these claims be held to be allowable

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,


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